

JAN 12 2009

PTO/SB/21 (12-97)

Approved for use through 9/30/00. OMB 0851-0031

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

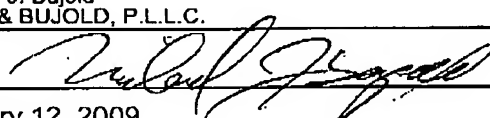
Application Number	10/581,898
Confirmation Number	
Filing Date	with an effective filing date of November 30, 2004
First Named Inventor	Gerd HEXELS
Group Art Unit	3765
Examiner Name	Alissa L. HOEY Fax: (571) 273-8300
Total No. of Pages in this Submission: 4	Attorney Docket Number LORWER P45AUS

## ENCLOSURES (check all that apply)


- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee attached - Check \$<br><input checked="" type="checkbox"/> Amendment/Response - 3 pgs.<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request (in Duplicate)<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Stmt<br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Response to Missing Part/s Incomplete Application<br><input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Assignment papers (for an Application)<br><input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition (DELETED - no longer useful)<br><input type="checkbox"/> To Convert a Provisional Petition<br><input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Small Entity Statement<br><input type="checkbox"/> Request for Refund | <input type="checkbox"/> After Allowance Communication to Group<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input type="checkbox"/> Additional Enclosure(s) (please identify below): |
|--|---|---|

## REMARKS

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Name	Michael J. Bujold DAVIS & BUJOLD, P.L.L.C.	Reg. No. 32,018 CUSTOMER NO. 020210
Signature		
Date	January 12, 2009	

## CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on <u>January 12, 2009</u>	
Signature	 Date: January 12, 2009 ( )

RECEIVED  
CENTRAL FAX CENTER  
JAN 12 2009

12Jan09

PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Gerd HEXELS
Serial no.	:	10/581,898
Confirmation No.	:	
Filed	:	with an effective filing date of November 30, 2004
For	:	PROTECTIVE CLOTHING FOR THE LOWER
	:	PART OF THE LEG
Group Art Unit	:	3765
Examiner	:	Alissa L. HOEY
Docket	:	LORWER P45AUS

The Commissioner for Patents  
U.S. Patent & Trademark Office  
P. O. Box 1450  
Alexandria, VA 22313-1450

## RESPONSE

Dear Sir:

[XXX] NO FEES ARE PAYABLE WITH RESPECT TO THIS RESPONSE.

In response to the official action mailed October 21, 2008, please enter the following before reconsideration of this application.

## REMARKS

Claim 57 is rejected, under 35 U.S.C. § 102(a), as being anticipated by Von Blucher '673 (DE 103 47 673) while claims 37, 41-42, 45-50, 53-55, 58-61, 64 and 71 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Von Blucher '673 in view of Pacanowsky et al. '447 (US 4,809,447). The Applicant acknowledges and respectfully traverses the raised anticipatory and obviousness rejections in view of the following remarks.

It is respectfully submitted that Von Blucher '673 is not a proper prior art reference to be cited against the claims of the above identified application. The Manual of Patent Examining Procedure states at 706.02(a)(II)(C) "[f]or 35 U.S.C. 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application, and must not be applicant's own work."

It is to be noted that the Von Blucher '673 application was filed in Germany on October 9, 2003. However, it is respectfully submitted that Von Blucher '673 can only be used as a prior art reference either as of publication date or patent date. Von Blucher '673 was patented on September 6, 2005 while its publication date is believed to have been approximately 18 months after the German filing date, e.g., sometime on or after April 9, 2005. Therefore, It is respectfully submitted that the earliest effective date for the Von Blucher '673 reference is sometime around the April 9, 2005 publication date of that German Patent which is after the November 30, 2004 effective filing date of the above identified application.